COMMONWEALTH OF MASSACHUSETTS
Labor Relations Commission

Fiscal Year 2001 Annual Report

It is hereby declared to be the policy of the commonwealth to [encourage] the practice and procedure of collective bargaining … by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

- M.G.L. c.150A, §1

Jane Swift, *Governor*

Helen A. Moreschi, *Chairwoman*
Mark A. Preble, *Commissioner*

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EXECUTIVE SECRETARY

December 1, 2001

Her Excellency Jane Swift, Governor
The Great and General Court
Citizens of the Commonwealth

In accordance with M.G.L. c.23, §9O(c), we are pleased to present this Annual Report for the Massachusetts Labor Relations Commission for the Fiscal Year 2001. We had set some goals that were decidedly ambitious and we have much progress to report.

Four years ago we began a project to eliminate cases that had been languishing in the agency for years. There were approximately sixty cases on appeal from Hearing Officers' decisions to the Commissioners, and now there are essentially none. We have also resolved the majority of all cases that are more than three years old. Cases had been ripe for investigation for as many as twenty weeks, and now we treat them within eight weeks; although in many instances they are treated within a week of becoming ripe. We have instituted other procedures to treat and resolve the important work we do as well. For example, Representation cases must be resolved within six months of filing, and Unit placement and other CAS cases must be resolved within twelve months of filing.

We accomplished this by the cooperation, hard work and diligent efforts of our staff and our management team. They reflect all of us well. Our annual report speaks volumes about their commitment to public service in Labor Relations.

Respectfully Submitted,

Helen A. Moreschi,
Chairwoman

Mark A. Preble,
Commissioner

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Who is the Labor Relations Commission?

The Labor Relations Commission was established in 1937 to administer Chapter 150A of the General Laws, the Commonwealth's private sector collective bargaining law. That law is sometimes referred to as the "Baby Wagner Act" because it mirrors the rights and obligations established at the federal level by the Wagner Act (which is commonly referred to as the National Labor Relations Act). The National Labor Relations Act grants employees the right to form and join unions and requires employers and employee organizations to bargain in good faith over wages, hours, and working conditions. However, both the National Labor Relations Act and Chapter 150A specifically excluded (and continue to exclude) public employees from coverage.

Following the lead set by President Kennedy in 1962, in 1965, the legislature enacted a series of amendments to Chapter 149, granting full collective bargaining rights to public employees in Massachusetts. Those same amendments charged the Labor Relations Commission with administering the new law. Finally, in 1973, the legislature enacted Chapter 150E, the present public employee collective bargaining law.

Over the years, as the Commission's public sector responsibilities increased, its private sector responsibilities have decreased. Changes in jurisdiction under the National Labor Relations Act have virtually eliminated the Commission's jurisdiction over employers under the state private sector statute. Today, more than 98% of the Commission's work is in the public sector.

What Services Does the Commission Provide?

Pursuant to its responsibility to ensure prompt and fair resolution of labor disputes, the Commission provides the following services:

1. Disposition of Charges of Prohibited Practice

Approximately 80% of the Commission's work is dedicated to adjudicating charges of prohibited practice under M.G.L. c.150A or M.G.L. c.150E. Charges of prohibited practice may include: allegations that an employer discriminated or retaliated against an employee because the employee had engaged in activities protected by law; allegations that an employer or employee organization failed to bargain in good faith; or allegations that an employee organization failed to properly represent a member of the bargaining unit.

When a charge of prohibited practice is filed, the Commission conducts an investigation by asking both parties to submit written position statements and affidavits or other documentary evidence that support the allegations in the charge or any defenses raised by the respondent. After both parties have filed their evidence, the Commission determines whether there is probable cause to believe that the law was violated in the manner alleged. If the Commission finds probable cause, it will issue a complaint of prohibited practice and schedule a hearing before a hearing officer. If the Commission finds that the evidence submitted is insufficient to establish probable cause, it will dismiss the charge and notify the parties by letter. In FY01, approximately 30% of the charges of prohibited practice were dismissed following an investigation. Cases dismissed following an investigation may be appealed to the Appeals Court.

If the Commission issues a complaint of prohibited practice, a hearing officer will conduct a hearing and the Commission will issue a decision. However, conciliation efforts by the Commissioners and hearing officers often result in voluntary resolution of a case prior to litigation. In FY01, conciliation efforts prior to litigation resulted in the voluntary resolution of 80% of the cases in which the Commission had issued a complaint of prohibited practice. The Commission's final decisions may also be appealed to the Appeals Court.

2. Conduct of Representation Elections and Bargaining Unit Determination

The Commission conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever: 1) an employer files a petition alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit; 2) an employee organization files a petition alleging that a substantial number of employees wish to be represented by the petitioner; or 3) an individual files a petition alleging that a substantial number of employees in the bargaining unit no longer wish to be represented by the current employee organization. Depending on the size of the unit and the relative cost, the Commission conducts elections either on location or by mail ballot.

The Commission is statutorily required to determine an "appropriate" bargaining unit. To make that determination, the Commission considers community of interest among the employees, the employer's interest in maintaining an efficient operation, and the employees' interest in being effectively represented.

The Commission assists and encourages the parties to reach agreement concerning an appropriate unit. In FY01, the Commission resolved approximately 90% of its representation cases through voluntary agreement over the scope of the bargaining unit. When no agreement is reached, however, the Commission conducts a

hearing, issues a written decision, and, when necessary, directs an election. In FY01, the Commission conducted forty-seven (47) elections involving 1,018 employees.

3. Prevention and Termination of Strikes

Strikes by public employees in Massachusetts are illegal. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the Commission for an investigation. The Commission quickly investigates the allegations contained in the petition and decides whether an unlawful strike has occurred or is about to occur. If unlawful strike activity is found, the Commission directs striking employees to return to work and issues other orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the Commission's order, but it is sometimes necessary to seek judicial enforcement of the order in Superior Court. This litigation can result in court-imposed sanctions against strikers.

4. Agency Service Fee Determinations

Chapter 150E allows public employers to enter into collective bargaining agreements which require non-union employees covered by the agreement to pay an agency service fee to the union, "commensurate with the cost of collective bargaining and contract administration," as a condition of continued employment. Employees may challenge either the amount of the annual agency service fee or the manner in which the fee was demanded by filing a charge with the Commission. Such charges often require a detailed evaluation of the union's expenses. Hundreds of charges are filed each year raising questions of constitutional rights, auditing and accounting practices, and labor policy. In FY01, the Supreme Judicial Court issued Belhumer v. Labor Relations Commission, 432 Mass. 458 (2000), which affirmed in part a prior Commission decision determining the appropriate agency service fee for employees represented by the Massachusetts Teachers Association. The Court remanded the matter to the Commission to recalculate the fee in three minor areas.

5. Court Litigation

Parties to final decisions issued by the Commission may appeal the decision to the Massachusetts Appeals Court. In those cases, in addition to serving as the lower court—responsible for assembling and transmitting the record for appellate review—the Commission is the appellee and defends its decision on appeal. Although a rare occurrence (there were no cases in FY01), M.G.L. c.150E also authorizes the Commission to seek judicial enforcement of its final orders in the Appeals Court or of its interim orders in strike cases in Superior Court. Commission attorneys represent the Commission in all litigation activities.

6. Other Responsibilities

- Unit clarification (CAS) petitions are filed by employee organizations or employers seeking to clarify or amend a recognized or certified bargaining unit. The Commission investigates and, where necessary, conducts hearings and issues decisions resolving those disputes. In FY01, the Commission processed forty (40) CAS petitions.
- M.G.L. c.150E provides that a party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration may petition the Commission to order grievance arbitration. These "Requests for Binding Arbitration" (RBA) are processed quickly by the Commission to assist the parties to resolve their grievances. In FY01, the Commission received no requests for binding arbitration.
- Pursuant to M.G.L. c.150E, §§13 and 14, the Commission maintains files on employee organizations. Those files include: the name and address of current officers, address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Every employee organization is also required to file an annual report with the Commission containing: the aims and objectives of such organization, the scale of dues, initiation fees, fines, and assessments to be charged to the members, and the annual salaries of the officers. Although M.G.L. c.150E authorizes the Commission to enforce these annual filings by commencing an action in the Superior Court, the Commission's current resources prohibit such action. Instead, the Commission uses various internal case-processing incentives to encourage compliance with the filing requirements.
- The Commission has an educational goal aimed at training labor and management representatives to foster better labor relations and to reduce the number of preventable or unnecessary charges filed at the Commission.

Diversity Initiative

On August 29, 2000, Governor Cellucci and then-Lieutenant Governor Swift announced the Governor's Diversity Initiative, an effort to increase the diversity of the Commonwealth's Executive Branch workforce. This effort is based upon the desire to increase the number of protected group members and to create a more diverse pool of candidates so the Commonwealth's workforce reflects the population of Massachusetts.

As part of the Diversity Initiative, each agency was asked to complete a Diversity Plan. Some of the goals in the Labor Relations Commission's Diversity Plan included inviting minority and women's bar associations to attend educational programs and participating in diversity training. On March 30, 2001, the Commission sent letters to minority and women's bar associations informing them that there were three upcoming

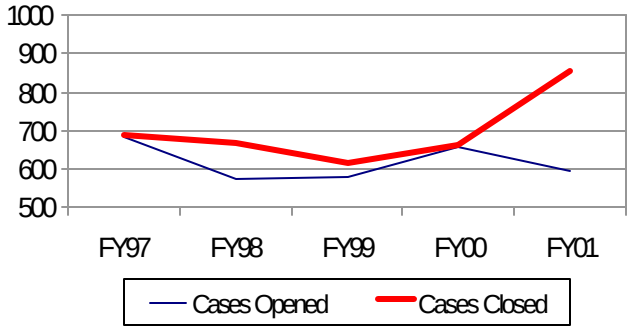
conference opportunities in the labor relations field. On April 25, 2001, the Commission and the Board of Conciliation and Arbitration jointly sponsored diversity training for their staff members conducted by Marion Sundgaard, a managing principal of Sun-Aire Consulting and adjunct professor at Emmanuel College and Northern Essex Community College. These activities gave Commission personnel the opportunity to network with members of the minority community and to increase their general awareness about interacting with each other, the parties, and the constituents.

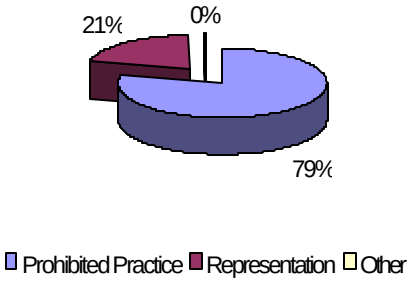
In sum, the Commission took significant steps in FY01 to incorporate the theme of diversity into the agency's culture. The Commission looks forward to continuing its efforts in the upcoming fiscal year.

Caseload Analysis

Overview

In FY01, the Commission opened 592 non-agency service fee cases, down slightly from last year, and closed 856, an increase of about 29% over FY00. The chart to the right shows the number of cases opened and closed for FY97 through FY01.

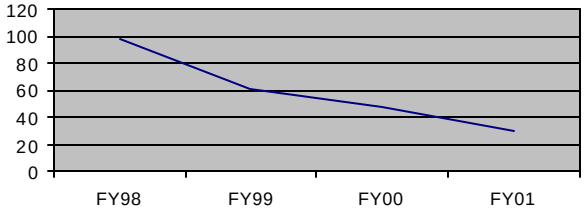


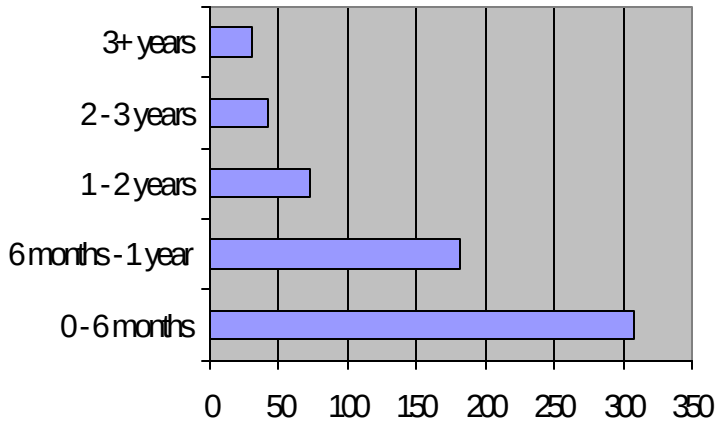


Most of the cases that the Commission processes falls into one of two categories: prohibited practice charges or representation cases. In FY01, the Commission opened 467 non-agency service fee prohibited practice charges and 120 representation cases. The chart to the left shows the breakdown of the kinds of cases that were filed in FY01.

Targeted Cases Initiative

In FY96, the Commission began to focus on the oldest cases in the agency. At that time, there were nearly 100 cases that had been pending for three or more years. The Commission "targeted" any case that would be three years old or older by the close of the fiscal year and closed nearly 40% of those cases in the first year of the initiative. In the years since, the Commission has continued to target its older cases and, as of the close of FY01, had only thirty remaining targeted cases. The chart to the left shows the number of cases that were three years old or older in each of the years since we began this initiative.





Age of the Commission's Docket

As a result of the Targeted Cases Initiative, the age of the Commission's docket has dramatically decreased in recent years. The chart to the left shows the number of cases pending at the close of FY01 by age.

Prohibited Practice Charges

The majority of prohibited practice charges that are filed with the Commission are filed by employee organizations. However, employers and individuals also filed charges. The table below shows who filed prohibited practice charges at the Commission in FY01.

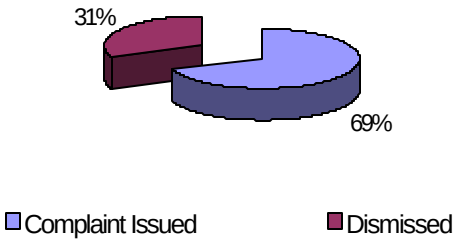
Charges Filed Against Employers	**No.**
♦ By Employee Organizations	380
♦ By Individuals	33
Charges Filed Against Employee Organizations	
♦ By Employers	14
♦ By Other Employee Organizations	3
♦ By Individuals	37
Total	**467**

The table below shows whom prohibited practice charges were filed against in FY01.

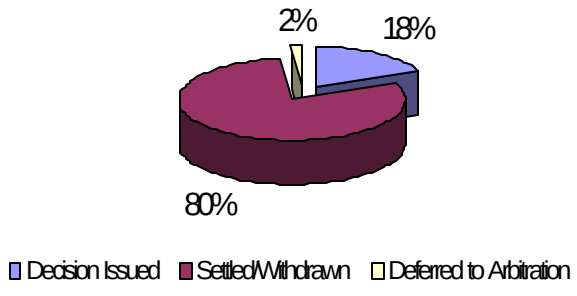
Respondent	**No.**
Commonwealth of Massachusetts (all Agencies and Departments)	97
Municipalities	210
School Districts	61
Counties	22
Housing Authorities	6
Other	16
Private Employers	1
Employee Organizations	54
Total	**467**

Investigation and Hearing

M.G.L. c.150E, §11 requires the Commission to conduct an investigation whenever a charge of prohibited practice is filed. In FY01, the Commission completed 295 investigations.* The investigations resulted in 201 complaints of prohibited practice. The remaining 90 cases were dismissed. The Commission also reconsidered twenty-four cases pursuant to 456 CMR 15.04(3). In addition, more than 175 cases were settled or withdrawn prior to or during the investigation.



* Although the Commission investigated a total of 534 charges, more than 240 of those charges involved individuals who filed identical charges against their union. Following its investigation, the Commission dismissed all of those charges. To more accurately reflect the results of the Commission's investigations, those charges have been counted as one case.



Of the cases completed following the issuance of a complaint of prohibited practice, 80% (143) were resolved prior to litigation. A small percentage (3 cases) were deferred to the parties' contractual grievance/arbitration procedure* and the Commission issued decisions in the remaining 33 cases. Please refer to pages 12 through 17 for a complete list of decisions issued in FY01.

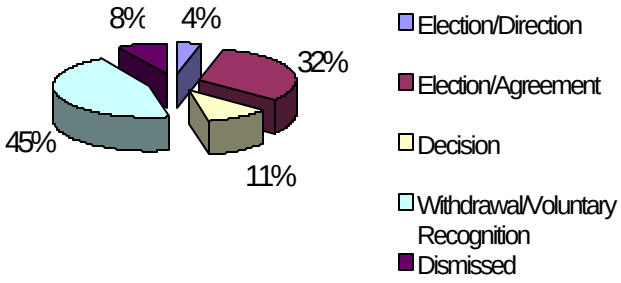
Representation/Unit Clarification Cases

In FY01, the Commission processed 118 Representation and Unit Clarification Cases, resulting in forty-seven elections involving 1,018 voters. Below is a breakdown of the Commission election activity.

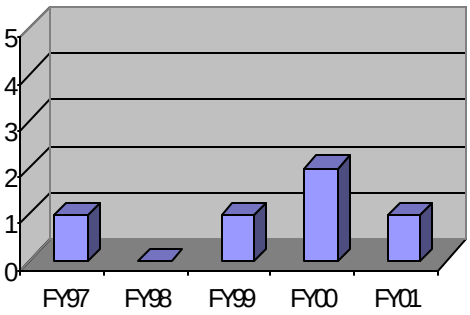
Size of Unit	Municipal		State		Private		Total	
	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters
Under 10	16	93	1	7			17	100
10-24	18	346			1	22	19	368
25-49	6	185					6	185
50-74	3	185					3	185
75-99	1	96	1	84			2	180
100-149								
150-199								
200-499								
Total	**44**	**905**	**2**	**91**	**1**	**22**	**47**	**1,018**

* Two of those cases were deferred voluntarily pursuant to Chapter 577 of the Acts of 1996.

In all but five (4%) representation cases, the Commission resolved the matter without litigation. Similarly, all but two (2%) unit clarification cases were resolved without litigation. The chart to the right shows how the Commission resolved the remaining Representation and Unit Clarification Cases. Please refer to pages 12 through 17 for a complete list of decisions issued in FY01.



Strikes



In FY01, the Commission processed one strike petition. The chart to the left shows the number of strike petitions the Commission processed between FY97 and FY01. The strike activity over the course of the last five fiscal years has significantly decreased. In the previous five fiscal years (FY92-FY96), the Commission processed an average of four strike petitions each year, including ten in FY95 alone.

Budget

FY01 Appropriation		**1,139270**
AA-Employee Compensation	958,792	
BB-Travel/Training	13,477	
DD-Pension/Insurance	20,083	
EE-Administrative Expense	37,943	
GG-Space Rental	7,257	
HH-Consultant Services	6,278	
JJ- Operational Services	3,590	
KK-Equipment Purchase	26,000	
LL-Equipment Lease & Maintenance	16,460	
Total Spending		**1,089,890**
Uncommitted Balance (Reverted)*		**49,390**

* The Commission was required to carry the salary of a 3rd Commissioner. Because one was not appointed during the course of the fiscal year, those funds were reverted.

Decisions Issued in FY01

PEABODY SCHOOL COMMITTEE and TEAMSTERS LOCAL UNION, NO. 42, Case No. MCR-4757 (8/14/00) 27 MLC 7 (2000)

WAKEFIELD SCHOOL COMMITTEE and AFSCME, COUNCIL 93, Case No. MUP-2441 (8/16/00) 27 MLC 9 (2000)

COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE and MASSACHUSETTS ORGANIZATION OF STATE ENGINEERS AND SCIENTISTS, Case No. SUP-4378 (8/24/00) 27 MLC 11 (2000)

TOWN OF GRAFTON and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL 495, Case No. RBA-148 (8/31/00) UNPUBLISHED

TANTASQUA REGIONAL SCHOOL DISTRICT and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 254, Case No. RBA-146 (8/31/00) UNPUBLISHED

SPRINGFIELD SCHOOL COMMITTEE and SPRINGFIELD PUBLIC HEALTH NURSES ASSOCAITION, Case No. MUP-2521 (9/1/00) 27 MLC 15 (2000)

SPRINGFIELD SCHOOL COMMITTEE and PROFESSIONAL AND HEALTH CARE DIVISION, UFCW, LOCAL 1459, AFL-CIO and SPRINGFIELD PUBLIC HEALTH NURSES ASSOCIATION, Case No. MCR-4773 (9/1/00) 27 MLC 20 (2000)

NEW BEDFORD HOUSING AUTHORITY and MASSACHUSETTS LABORERS' DISTRICT COUNCIL OF THE LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, Case No. MUP-1650 (9/7/00) 27 MLC 21 (2000)

RANDOLPH SCHOOL COMMITTEE and RANDOLPH EDUCATORS ASSOCIATION, Case No. CAS-3439 (9/12/00) 27 MLC 25 (2000)

CITY OF EVERETT and EVERETT FIREFIGHTERS LOCAL 1656, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, Case No. MUP-2428 (9/15/00) UNPUBLISHED

TOWN OF FALMOUTH and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 94, AFL-CIO and FALMOUTH FIRE FIGHTERS' UNION, LOCAL 1397, IAFF, AFL-CIO, Case No. CAS-3319 and MCR-4696 (9/18/00) 27 MLC 27 (2000)

TOWN OF GRAFTON and GRAFTON POLICE ASSOCIATION, MCOP, LOCAL 152, Case No. RBA-147 (10/6/00) UNPUBLISHED

BOSTON TEACHERS UNION, LOCAL 66, MFT, AFT, AFL-CIO and EDWARD DOHERTY, THOMAS J. GOSNELL, EDWARD WELCH, MARY GREENE, MARY ANN URBAN, NANCY G. THOMPSON, RICHARD F. STUTMAN, CAROL A. PACHECO, IN THEIR REPRESENTATIVE CAPACITY AS OFFICERS OF THE UNION AND MEMBERS OF THE UNION'S NEGOTIATING TEAM and BOSTON SCHOOL COMMITTEE, Case No. SI-264, (10/10/00) 27 MLC 33 (2000)

TOWN OF LUDLOW and LUDLOW ASSOCIATION OF TOWN OFFICE SECRETARIES, Case No. CAS-3435 (10/17/00) 27 MLC 35 (2000)

FALL RIVER SCHOOL COMMITTEE and FALL RIVER SCHOOL DEPARTMENT CIVIL SERVICE CLERICAL EMPLOYEES ASSOCIATION, Case No. CAS-3363 (10/23/00) 27 MLC 37 (2000)

TOWN OF CHELMSFORD and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO, Case No. CAS-3394 (11/6/00) 27 MLC 41 (2000)

SOMERVILLE FIRE FIGHTERS ASOCIATION, LOCAL 1240, IAFF and JOSEPH CROWLEY, Case No. MUPL-4172 (11/16/00) 27MLC 45 (2000)

CITY OF FALL RIVER and FALL RIVER FIRE FIGHTERS, LOCAL 1314, IAFF, Case No. MUP-1961 (11/21/00) 27 MLC 47 (2000)

COMMONWEALTH OF MASSACHUSETTS and ALLIANCE, AFSCME/SEIU, LOCAL 509, Case No. SUP-4091 (11/21/00) 27 MLC 53 (2000)

CITY OF LAWRENCE and LAWRENCE PATROLMEN'S ASSOCIATION, Case No. MUP-1948 (12/1/00) 27 MLC 57 (2000)

CITY OF LYNN and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO, Case No. MUP-2236 and MUP-2237 (12/1/00) 26 MLC 60 (2000)

CITY OF SOMERVILLE and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES and SOMERVILLE MUNICIPAL EMPLOYEES ASSOCIATION, Case No. MCR-4784 (12/1/00) 27 MLC 63 (2000)

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY and OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 453 , AFL-CIO-CLC, Case No. CR-3691 and CR-3720 (12/1/00) 27 MLC 67 (2000)

COMMONWEALTH OF MASSACHUSETTS/COMMISSIONER OF ADMINISTRATION AND FINANCE and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R1-282, UNIT 6B, Case No. SUP-4503 (12/6/00) 27 MLC 71 (2000)

TOWN OF BELCHERTOWN and AFSCME, COUNCIL 93, AFL-CIO, Case No. MUP-2397 (12/21/00) 27 MLC 73 (2000)

CITY OF NEWTON and NEWTON POLICE ASSOCIATION, Case No. MUP-9926 (12/29/00) 27 MLC 75 (2000)

QUINCY SCHOOL COMMITTEE and KAREN SCHOLZ, Case No. MUP-1986 (12/29/00) 27 MLC 83 (2000)

TOWN OF HOLLISTON and HOLLISTON POLICE ASSOCIATION, Case No. MUP-9776 (1/3/01) 27 MLC 95 (2001)

SHERIFF OF ESSEX COUNTY and ESSEX COUNTY CORRECTIONAL OFFICERS, Case No. MUP-1876 (1/4/01) 27 MLC 97 (2001)

WINCHENDON SCHOOL COMMITTEE and AFSCME, COUNCIL 93, AFL-CIO and MASSACHUSETTS TEACHERS ASSOCIATION, Case No. MCR-4732 (1/4/01) 27 MLC 101 (2001)

FRANKLIN SCHOOL COMMITTEE and FRANKLIN EDUCATION ASSOCIATION/MTA, Case No. CAS-3460 (1/11/01) 27 MLC 102 (2001)

SHERIFF OF WORCESTER COUNTY and MASSACHUSETTS CORRECTION OFFICERS FEDERATED UNION, Case No. MUP-1910 (1/11/01) 27 MLC 103 (2001)

WOBURN HOUSING AUTHORITY and LOCAL 254, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Case No. MCR-4765 (1/12/01) 27 MLC 109 (2001)

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO and DARYL D. DUNLAP, Case No. SUPL-2696 (2/9/01) 27 MLC 113 (2001)

PLAINRIDGE RACE COURSE, INC. and LOCAL 254, SEIU, AFL-CIO, Case No. CR-3721 (2/9/01) 27 MLC 117 (2001)

CITY OF BOSTON SCHOOL COMMITTEE and BOSTON PUBLIC SCHOOL CUSTODIANS ASSOCIATION, Case No. MUP-1941 (2/15/01) 27 MLC 121 (2001)

BRISTOL COUNTY RETIREMENT BOARD and TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 59, Case No. MCR-4841 (3/14/01) 27 MLC 125 (2001)

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO and HERBERT AVANT, Case No. SUPL-2695 (4/9/01) 27 MLC 129 (2001)

TOWN OF MASHPEE and MASHPEE POLICE ASSOCIATION and INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, Case No. MCR-01-4873 and MCR-01-4874 (4/10/01) 27 MLC 133 (2001)

TOWN OF NATICK and NATICK PATROL OFFICERS ASSOCIATION and INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, Case No. MCR-01-4879 (4/27/01) 27 MLC 135 (2001)

MELROSE POLICE ASSOCIATION and CITY OF MELROSE, Case No. MUPL-4227 (4/30/01) 27 MLC 136 (2001)

CITY OF SPRINGFIELD and SPRINGFIELD COMPUTER AIDED DISPATCH ASSOCIATION and AFSCME, COUNCIL 93, AFL-CIO, Case No. MCR-4800 (5/11/01) 27 MLC 138 (2001)

TOWN OF MARBLEHEAD and MARBLEHEAD PUBLIC SAFETY AND COMMUNICATIONS ASSOCIATION and LOCAL 1776, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE & FURNITURE WORKERS, AFL-CIO, Case No. MCR-4799 (5/11/01) 27 MLC 143 (2001)

CITY OF EVERETT and EVERETT CLERICAL EMPLOYEES ASSOCIATION and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, Case No. MCR-4824 (5/23/01) 27 MLC 147 (2001)

WESTPORT FEDERATION OF TEACHERS, LOCAL 1906, MFT/AFT, AFL-CIO and WESTPORT SCHOOL COMMITTEE, Case No. MUPL-4279 (5/31/01) 27 MLC 152 (2001)

TOWN OF WINCHENDON and AFSCME, COUNCIL 93, AFL-CIO, Case No. CAS-3419 (6/4/01) 27 MLC 153 (2001)

SUFFOLK COUNTY SHERIFF'S DEPARTMENT and AFSCME, COUNCIL 93, LOCAL 1134, AFL-CIO, Case No. MUP-1498 (6/4/01) 27 MLC 155 (2001)

TOWN OF SOUTH HADLEY and INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 375, Case No. MUP-1834 (6/12/01) 27 MLC 161 (2001)

WORCESTER COUNTY SHERIFF'S DEPARTMENT and MASSACHUSETTS CORRECTION OFFICERS FEDERATED UNION, Case No. SUP-4531 (6/13/01)

TOWN OF SAUGUS and SAUGUS POLICE UNION and SAUGUS SCHOOL COMMITTEE, Case Nos. MUP-2343 and CAS-3388 (6/15/01)

COMMONWEALTH OF MASS./COMMISSIONER OF ADMINISTRATION AND FINANCE/DIVISION OF MEDICAL ASSISTANCE and ALLIANCE, AFSCME-SEIU LOCAL 509, Case No. SUP-4448 (6/15/01)

AFSCME, COUNCIL 93, AFL-CIO, LOCAL 3556 and DIANE CALVANESE, MARY HOGAN, ANNA CALVANESE and MARGARET RANNENBERG, Case Nos. ASF-4862, ASF-4863, ASF-4864, ASF-4865 (6/21/01)

LOWELL SCHOOL COMMITTEE and UNITED TEACHERS OF LOWELL, LOCAL 495, MFT/AFT, AFL-CIO, Case No. MUP-2074 (6/22/01)

CITY OF MELROSE and MELROSE FIRE FIGHTERS, LOCAL 1617, I.A.F.F., Case No. MUP-1838 (6/22/01)

MASSACHUSETTS PORT AUTHORITY and INTERNATIONAL LONGSHOREMAN'S ASSOCIATION, LOCAL 809, Case No. CAS-3300 (6/28/01)

PRINCETON MUNICIPAL LIGHT DEPARTMENT and LOCAL 104, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Case No. MCR-4803 (6/29/01)

COMMONWEALTH OF MASSACHUSETTS/ COMMISSIONER OF ADMINISTRATION AND FINANCE, Case No. SUP-4345 (6/29/01)

PEABODY SCHOOL COMMITTEE and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO, Case No. MUP-2073 (6/29/01)

CITY OF MELROSE and MELROSE FIRE FIGHTERS, LOCAL 1617, I.A.F.F., Case No. MUP-1010 (6/29/01)

TOWN OF CHATHAM and TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 59, Case No. MUP-9186 (6/29/01)

CITY OF BOSTON and LOCAL 285, SEIU, AFL-CIO, Case No. MUP-1687 (6/29/01)

CITY OF BOSTON and BOSTON POLICE SUPERIOR OFFICERS FEDERATION, Case No. MUP-1272 (6/29/01)

TOWN OF SHREWSBURY and INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 426, Case No. MUP-1704 (6/29/01)

CITY OF SOMERVILLE and TEAMSTERS LOCAL UNION NO. 25, AFL-CIO and SOMERVILLE MUNICIPAL EMPLOYEES ASSOCIATION, Case No. MCR-4805 and CAS-3452 (6/29/01)

Synopses of Selected Decisions*
July 1, 2000 to June 30, 2001

The issue before the Commission in Commonwealth of Massachusetts, 26 MLC 209 (2000) (on appeal), was whether the Commonwealth violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it issued new post orders for correction officers employed at MCI Plymouth. The facts before the Commission reflected that, prior to March 1996, correction officers at MCI Plymouth were subject to post orders that defined the specific duties and responsibilities of employees assigned to a particular post. Those post orders contained no time periods for completing any of the listed duties and, under those orders, an officer would remain at his or her post until being relieved by an incoming officer. In March 1996, however, the Commonwealth implemented new post orders that designated times for performing specific duties and set specific times for the beginning and ending of shifts.

The Commission concluded that the Commonwealth did not alter an existing condition of employment that triggered a bargaining obligation when it issued the new post orders. The Commission reasoned that the time designations in the new post orders did not increase the amount of time officers spent on any tasks or change the duties officers were required to perform. Rather, employees were required to complete the same tasks by the end of their shift, under both the old and new post orders. Further, the Commonwealth has not required officers to adhere to the time periods in the new post orders. Therefore, the Commission found that the time designations are merely a codification of optimal time frames and not an additional job requirement over which the Commonwealth was required to bargain.

In Town of Plymouth, 26 MLC 220 (2000)(on appeal), the Commission considered whether the Town of Plymouth (Town) had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by implementing a drug and alcohol policy for certain employees of its public works department (DPW) without bargaining to resolution or impasse with AFSCME, Council 93, the Union representing those employees. On March 17, 1994, the Federal Highway Administration had promulgated a regulation requiring employers with fifty or more employees who drive commercial motor vehicles to implement certain drug and alcohol testing requirements on January 1, 1995. Between March 1995 and October 1995, the parties held several bargaining sessions about the impacts of a proposed policy the Town had developed in response to the Federal directive. On August 10, 1995, the parties reached a tentative agreement, but the Union's membership voted to reject it. The Union wrote to the Town asking to continue bargaining, and the Town responded with a request for reasons why

* This summary is not intended to be a comprehensive review of all Commission decisions that have issued during the past year. Rather, it highlights significant decisions of the Commission during that period.

the Union's membership had rejected the tentative agreement. The Union declined to provide any reasons via mail and again requested to meet. Because the Union did not provide the Town with written reasons for rejecting the tentative agreement, the Town declared that the parties were at an impasse in their negotiations and implemented its proposed drug and alcohol policy.

The Commission determined that the parties were not at impasse and that the Town had unilaterally implemented the drug and alcohol policy. The Commission held that the parties were not at impasse because the Union expressed a desire to continue bargaining and to bring the parties back to the bargaining table, but the Town attempted to avoid further bargaining by insisting on knowing the reasons why the Union's membership had rejected the tentative agreement before agreeing to return to the bargaining table. Further, the Commission rejected the Town's argument that the Federal rule required it to implement a drug and alcohol policy by January 1995. Because the Town did not implement the policy until November 1995, the Commission found it was illogical for the Town to argue that there were circumstances beyond its control that required it to implement the policy when it did.

The issue before the Commission in City of Taunton, 26 MLC 225 (2000), was whether the City violated Section 10(a)(5) and, derivatively Section (a)(1) of Chapter 150E by unilaterally implementing a defibrillation program in the City's fire department. Relying on Town of Arlington, 21 MLC 1125 (1994), the Commission first concluded that the impacts of the defibrillator program was a mandatory subject of bargaining because it required training of bargaining unit members in how to use the defibrillators, changed their job duties, and increased their workload. Next, the Commission rejected the City's argument that the Union had waived its right to bargain over any impact issues but compensation because the Union had only requested to bargain about a stipend. The Commission reasoned that, even though the Union had asked to bargain about a stipend, there was no evidence that it had intended only to bargain about the stipend and no other impact issues. Accordingly, the Commission held that the City had violated Sections 10(a)(5) and (1) of the Law by implementing the defibrillator program without giving the Union the opportunity to bargain to resolution or impasse about the impacts of the program. Although the City had argued that it would be contrary to public policy for the Commission to order it to remove the defibrillators pending bargaining, the Commission issued a traditional status quo order and encouraged the parties to explore alternatives other than rescinding the program pending impact bargaining.

In Commonwealth of Massachusetts, 27 MLC 11 (2000)(on appeal), the Commission considered: 1) whether the Commonwealth had unilaterally altered a free parking policy at the Department of Environmental Protection's (DEP) central regional office; and 2) whether the Commonwealth had bypassed the Union and dealt directly with unit members by forming a parking committee. The facts before the Commission reflected that the DEP moved its offices in November 1996. Although the DEP's lease

at its former location did not provide for free parking, there was a handshake agreement between DEP officials and the landlord to provide free parking. Further, DEP issued parking stickers on behalf of the landlord. The lease DEP negotiated for the new location did not provide free parking, and the executive director solicited volunteers to form a parking committee to explore parking at the new location. The parking committee explored parking alternatives at the new location and made recommendations about car pooling to the executive director, who accepted those recommendations. The DEP did not provide free parking for its employees at the new location.

The Commonwealth argued that it did not unilaterally change a term and condition of employment by not making parking available at the new location because it had not provided free employee parking at the prior location. Rather, any free parking that was available at the former location was provided by the landlord, not the Commonwealth. The Commission determined, however, that the Commonwealth had played an active role in securing free parking for DEP employees at the former location and that free parking was a term or condition of employment for those employees. Accordingly, the Commonwealth violated Sections 10(a)(5) and (1) when it unilaterally ceased to provide free parking at the new location.

However, the Commission concluded that the Commonwealth did not violate Sections 10(a)(2) or (5) of the Law by creating the parking committee. The Commission reasoned that there was no direct dealing in violation of Section 10(a)(5) or interference with the Union in violation of Section 10(a)(2) because there was no evidence of a course of dealing between the volunteer members of the parking committee and the DEP's executive director.

In City of Fall River, 27 MLC 47 (2000)(on appeal), the Commission considered whether the City had failed to bargain in good faith by unilaterally transferring fire dispatch duties to non-unit personnel. The record before the Commission reflected that fire fighters had historically performed fire dispatch duties. However, the City decided to transfer that work to civilian personnel at its E-911 facility. The City argued that that decision was within its managerial prerogative and that it took that action to comply with the public safety purposes of the state-mandated E-911 program. The Commission found, however, that the City's existing system of having E-911 call takers separate from the fire dispatchers did not have a measurable negative impact on public safety. Rather, the City's decision was motivated by a decision to increase cost savings from a fully integrated E-911 system. Therefore, the City's decision to transfer the fire dispatching duties to civilian E-911 call takers was a mandatory subject of bargaining.

In Quincy School Committee, 27 MLC 83 (2000), the Commission concluded, inter alia, that the School Committee had violated Section 10(a)(3) and (1) of the Law by declining to grant the charging party professional teacher status in retaliation for her

concerted, protected activity. The evidence before the Commission demonstrated that the School Committee had mixed motives for its decision, and the Commission found that the charging party had met the burden of proof under the analytical framework in Trustees of Forbes Library v. Labor Relations Commission, 384 Mass. 559 (1991), which the Commission had historically applied in mixed motive cases. However, the Commission also noted that, in Wynn & Wynn P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655 (2000), the Supreme Judicial Court recently adopted a different two-step analysis for mixed motive cases under Chapter 151B. Because the evidence satisfied the higher standard of proof in Forbes Library, however, it was not necessary for the Commission to decide in that case whether to adopt the Wynn & Wynn mixed motive analysis for alleged violations of Section 10(a)(3) of the Law.

The issue in Sheriff of Worcester County, 27 MLC 103 (2001) (on appeal), was whether the Sheriff violated Sections 10(a)(5) and (1) of the Law by unilaterally implementing a policy precluding correction officers from wearing pins, including union insignia. The Commission found that the Sheriff had an established practice of permitting unit members to wear various pins, including claddagh pins, guardian angel pins, and union insignia on their uniforms and that the Sheriff unilaterally changed this practice when he issued a memorandum prohibiting the wearing of any unauthorized pins.

The Sheriff argued that, because M.G.L. c. 126, Section 9A requires officers in county penal institutions to wear uniforms prescribed by the sheriff and that statute is not listed in Section 7(d) of Chapter 150E, the Sheriff had the right to determine uniform policy without first bargaining with the Union. The Commission rejected that argument, however, reasoning that Chapter 126, Section 9A was a general grant of legislative authority that did not control the wearing of pins. Therefore, absent a specific statutory mandate permitting the Sheriff to prohibit the wearing of pins, the Sheriff was obligated to bargain before prohibiting the correction officers from continuing the practice of wearing pins on their uniforms.

Next, the Commission considered whether the pin prohibition interfered with, restrained, or coerced employees in the exercise of their rights under Section 2 of the Law. It reiterated that the right to wear union pins or insignia during working hours is concerted activity protected by Section 2 of the Law. Although the Sheriff argued that the need to maintain order and discipline in a prison facility outweighed the employees' Section 2 rights, the Commission found that the Sheriff had allowed some employees to wear non-union pins. Therefore, because the rule had been enforced only against union buttons, the Commission found there was no truly legitimate purpose for the rule.

The Commission considered objections to an election in Plainridge Race Course, Inc., 27 MLC 117 (2001). The Employer's Mutuel Manager had sent eligible voters a letter listing "reasons why there should not be a union," which included the following:

> REASON #1: The shifts right now are pretty flexible in that if you need to go to the bathroom, get a drink or stretch your legs during a quiet period, you are able to take a break. If a union comes in, you will be allowed one (1) 15-minute break per shift. The management would determine the time of the break. All flexibility would be gone! (Smokers had better invest in the patch!)
>
> REASON#2: For those of you who work a double shift, you are now paid for your dinner breaks. If a union comes in, you will not be paid.
>
> REASON #3: If you have worked at Plainridge since the beginning (3-17-99) there is no one who has more seniority than you. If a union comes in, you have a very good chance of being #11 or #12 or lower. This could very well affect your working schedule, as shifts will be assigned on a seniority basis…

The letter ended with the following:

> . . . If the Union wins on September 11th, there will immediately be a wall between you and me. That wall is called Local 254 of the S.E.I.U. I will not be able to deal with you one-on-one as I have in the past. If the union comes out on top, it will be strictly business between you and me. No more little favors will be extended to you. Everything will be done to protect the bottom line of Plainridge Racecourse. For instance, I may start passing out and collecting I.R.S. "tip income" forms to make sure that everyone is properly reporting their tip income, as they should be anyway.

The Commission had not previously considered whether threatening statements made during the course of an election campaign constituted objectionable conduct that warranted a new election. However, relying on the standard set out in N.L.R.B. v. Gissel Packing Co., Inc., 395 U.S. 575 (1969), the Commission concluded that, if a statement during an election campaign can reasonably be interpreted by employees as a threat or create an atmosphere of apprehension in the mind of the voters, the employer has interfered with employee free choice. Here, the Commission found that the employees could reasonably interpret the statements in the Employer's letter as threats to negatively alter previous working conditions, and it ordered that the results of the election be set aside.

The issue in AFSCME, Council 93, Case No. SUPL-2695 (April 9, 2001)(on appeal) was whether the Union had breached its duty of fair representation because the Union's local chief steward did not process a grievance to arbitration because he assumed incorrectly that the Employer was obligated to request arbitration. The grievance alleged that the grievant had been bypassed for promotion to a position in another bargaining unit. The language in the applicable collective bargaining agreement required the Employer to post a "notice of a promotional vacancy in a position covered by this agreement" and provided that "any dispute regarding any promotion pursuant to this Article shall be subject to the grievance and arbitration procedure by only the two (2) most senior applicants."

Although the Commission found that the Union's conduct here met the standard of inexcusable neglect under Goncalves v. Labor Relations Commission, 43 Mass. App. Ct. 289 (1997), it concluded that the Union had not breached its duty of fair representation in failing to process the grievance to arbitration because the grievance had no arguable merit and could not have succeeded if arbitration had taken place. The Commission reasoned that, because the grievant had sought a promotion to a position that was not covered by the agreement between the Union and the Employer and because there was no language in that agreement dealing with promotions to non-unit positions, the grievance had no merit and the Union had not breached its duty toward the grievant by failing to arbitrate it.

The Commission considered two cases in which unions sought to sever E-911 dispatchers from existing bargaining units. Town of Marblehead, Case No. MCR-4799 (May 11, 2001), and City of Springfield, Case No. MCR-4800 (May 11, 2001). Applying its traditional two-part severance analysis, the Commission determined that the dispatchers in both cases were functionally distinct from other employees in the units because they performed a specialized function that required specialized expertise, training, and state certification. However, the Commission declined to create separate units of dispatchers merely because they were unable to achieve all of their bargaining goals within the larger bargaining unit. Further, the Commission noted that there was no evidence in either case that the distinctive functions of the dispatchers caused special negotiating concerns that had caused or were likely to cause conflicts within the existing bargaining units.

The Commission issued a pair of decisions concerning a municipality's obligation to submit appropriations necessary to fund collective bargaining agreements and arbitration awards issued by the Joint Labor Management Committee (JLMC). City of Melrose, Case No. MUP-1838 (June 22, 2001)(on appeal); City of Melrose, Case No. MUP-1010 (June 29, 2001)(on appeal). The facts in Case No. MUP-1838 reflect that, on the day of a scheduled interest arbitration, the parties reached agreement on all of the outstanding issues in dispute and executed a memorandum including the general terms of that agreement. The City declined to submit an appropriation request to its

Board of Aldermen pursuant to Section 7(b) of the Law until the parties incorporated their agreement into a fully-integrated contract. Approximately a year later, the parties executed a fully-integrated agreement, and the City sought and obtained appropriation to fund it. The Commission held that, absent language in their memorandum of agreement making the City's obligation to seek funding contingent on the parties executing a fully-integrated contract, the City was obligated to seek funding based on the memorandum of understanding. Although the Union had requested the Commission to order interest on wages that would have been paid during the time the parties signed their memorandum of agreement and the time the City ultimately sought funding, the Commission declined to do so. Relying on County of Suffolk v. Labor Relations Commission, 15 Mass. App. Ct. 127 (1983), the Commission reasoned that any wages due under the memorandum of agreement could not assume any monetary significance until there was a legislative appropriation.

The issue in Case No. MUP-1010 was whether the City violated Sections 10(a)(5), (6) and, derivatively 10(a)(1) of the Law by failing to submit an appropriate request to fund a JLMC arbitration award to the City's Board of Aldermen. The Commission held that, because Section 4A of St. 1987, c. 589 requires public employers to support a JLMC arbitration award to the same extent that Section 7 of Chapter 150E requires employer's to support a successor collective bargaining agreement, an employer violates Section 10(a)(5) and (6) of the Law if it fails to timely submit an appropriation request to fund a JLMC award. Therefore, the Commission found that the City had violated Sections 10(a)(5), (6) and, derivatively, 10(a)(1) by failing to seek funding for a JLMC award. For the same reasons it set out in Case No. MUP-1838, however, the Commission declined to order the City to pay interest on the unpaid wages in the absence of a funding request.

In City of Boston, Case No. MUP-1687 (June 29, 2001)(on appeal), the Commission considered whether the City had violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by failing to provide the Union with a report written by a consultant who was coaching a supervisor about his management style. The Union had filed a grievance alleging that management in the department where the supervisor worked had violated the parties' collective bargaining agreement by not showing proper respect and dignity to employees in the unit. The Commission concluded that the consultant's report was relevant to the Union's grievance because the report would shed light on how the supervisor had treated the unit members and whether, by his conduct, the City had violated the parties' agreement. Further, the Commission rejected the City's argument that the supervisor's interest in confidentiality outweighed the Union's interest in the report. The Commission reasoned that, even if the report might have been exempt from disclosure under the public records statute, there was no evidence that it contained the kind of highly sensitive information that would override the Union's right to information under Chapter 150E.

The issue before the Commission in City of Boston, Case No. MUP-1272 (June 29, 2001), was whether the City had violated Sections10(a)(5) and, derivatively, 10(a)(1) of the Law by implementing a new sexual harassment policy that changed the procedures for reporting alleged sexual harassment. First, the Commission concluded that the new policy changed working conditions because it required employees to file new procedures for reporting sexual harassment complaints. Second, the Commission rejected the City's argument that the Union had waived its right to bargain by inaction. The Commission found that the Union expressed a desire to bargain when it learned of the proposed change in the policy, and, each time the City contacted the Union about the policy, the Union responded that it wished to bargain. Therefore, the City unilaterally changed the policy in violation of Sections 10(a)(5) and (1) of the Law.

In Town of Shrewsbury, Case No. MUP-1704 (June 29, 2001)(on appeal), the Commission concluded that the Town had failed to bargain in violation of Sections 10(a)(5) and (1) of the Law by unilaterally altering a locker policy. The evidence before the Commission demonstrated that the Town's police officers would supply their own locks for their lockers, without providing a key or combination to the department, there was no practice of randomly inspecting lockers, and officers could keep personal items in their lockers. However, the Chief issued a memorandum providing that only department-issued locks could be used, all lockers would be subject to random inspection, and only department-issued items could be stored in the lockers. The Commission reasoned that providing lockers to police officers and the manner in which the officers could use them is a benefit and, therefore, a condition of employment over which the Town was required to bargain.

Litigation Activity
July 1, 2000 – June 30, 2001

I. Decisions Issued

1. Belhumeur v. Labor Relations Commission, 432 Mass. 458 (2000). An appeal from a decision issued by the Commission following a fifty-three day hearing to determine whether the amount of the agency service fees the Massachusetts Teachers Association demanded based on its expenses for 1990-91 exceeded the cost of collective bargaining and contract administration. The issues on appeal include whether the Commission had properly allocated the burden of proof between the parties, whether the Commission had applied the correct method for calculating the amount of the fee, and whether the Commission correctly determined that several expenses were chargeable or non-chargeable. The Supreme Judicial Court affirmed the Commission's decision, with the exception of one expense the Commission should have treated as nonchargeable and two it should have treated as chargeable.

2. Commonwealth of Massachusetts v. Labor Relations Commission, 434 Mass. 340 (2001). An appeal from a full Commission decision challenging the Commission's authority to award compound interest and to set interest on Commission remedies at the same rate as set forth in Section 6B of Chapter 231. The Supreme Judicial Court held that the Commission did not have authority to order the Commonwealth to pay interest at the rate of 12%, the same rate that may be assessed against private parties in tort actions. The Court upheld the Commission's authority to award compound interest against the Commonwealth, however.

3. Collective Bargaining Reform Associates v. Labor Relations Commission, Suffolk Superior Court C.A. No. 99-0806C. Collective Bargaining Reform Associates filed an action in Superior Court attempting to appeal from the Commission's decision dismissing a representation petition seeking to sever communication equipment operators from a larger unit of City of Boston employees. The plaintiff filed a motion for judgment on the pleadings, and the Commission and the intervenors filed an opposition, arguing that Commission decisions in representation cases are not final orders subject to judicial review. The Superior Court (Steele, J.) dismissed the Union's case on the ground that the Commission's decision was not subject to judicial review. The Supreme Judicial Court granted the Union's request for further appellate review.

4. Gifford v. Labor Relations Commission, 49 Mass. App. Ct. 1117 (2000). An appeal from a pre-complaint dismissal finding that the Boston Police Superior Officer's Federation had not breached its duty of fair representation by declining to represent an employee in connection with a reprimand because the conduct giving rise to the reprimand arose when the employee was in a management position. The Appeals

Court issued a decision pursuant to Rule 1:28 concluding that the Commission's pre-complaint dismissal was well-supported.

5. Herbert v. Labor Relations Commission, 51 Mass. App. Ct. 1101 (2001) An appeal from a pre-complaint dismissal finding that a duty of fair representation charge was untimely and the Massachusetts Nurses Association did not breach its duty of fair representation toward her by concluding that she was not entitled to participate in a remedy ordered in a prior prohibited labor practice case. The Appeals Court issued a decision pursuant to Rule 1:28 summarily upholding the Commission's determination that the charge was untimely and that the facts adduced at the investigation did not establish probable cause to believe that the Union had breached its duty of fair representation to her.

6. City of Boston v. LRC, 51 Mass. App. Ct. 1115 (2001) An appeal from a Commission decision holding that the City of Boston had violated Sections 10(a)(5) and (1) of Chapter 150E by failing to provide Boston Firefighters, Local 718 IAFF with notes taken by an attorney retained by the City during an investigation of alleged harassment by an employee represented by the Union. In a ruling issued pursuant to Rule 1:28, the Appeals Court concluded that there was substantial evidence to support the Commission's findings that : 1) the notes were relevant and reasonably necessary; and 2) the City waived its right to withhold the notes based on the attorney-client privilege or the work product doctrine. The Supreme Judicial Court denied a request for further appellate review filed by the City.

7. Wong v. LRC , 51 Mass. App. Ct. 1107 (2001) An appeal from a pre-complaint dismissal dismissing a DFR charge as untimely. The Appeals Court summarily affirmed the Commission's pre-complaint dismissal in a ruling pursuant to Rule 1:28.

II. Pending Cases

1. City of Somerville v. Labor Relations Commission, A.C. No. 98-P-1206. An appeal from a final Commission decision holding that the position of City Clerk and Assistant City Clerk were not legislative positions excluded from the coverage of Chapter 150E, Section 1. The Appeals Court heard arguments on March 10, 2000.

2. AFSCME v. LRC, A.C. No. 99-P-834. An appeal from a pre-complaint dismissal concluding that the City of New Bedford had not repudiated an agreement regarding personal leave for emergency medical services personnel employed by the City. The Appeals Court heard oral arguments on May 8, 2001.

3. Mansfield v. LRC, A.C. No. 99-P-1215. An appeal from a full Commission decision holding that the Town of Mansfield violated Sections 10(a)(1) and (5) of Chapter 150E

by failing to bargain with the Union about the impacts of eliminating patrol officer positions from a split shift. The parties completed briefing in November 1999.

4. Worcester v. LRC, A.C. No. 99-P-1443. An appeal from a full Commission decision holding that the City of Worcester violated Sections 10(a)(1) and (5) by failing to bargain with the Union about the impacts of a decision to designate police officers as supervisors of attendance. The Appeals Court heard oral arguments on May 17, 2001.

6. Massachusetts Correction Officers Federated Union v. LRC, A.C. No. 99-P-1057. An appeal from a pre-complaint dismissal finding that there was insufficient probable cause to believe that the Commonwealth had unilaterally assigned new cleaning duties to correction officers without giving the Union prior notice or an opportunity to bargain. The Appeals Court heard oral arguments on May 3, 2001.

7. Wilson v. LRC, A.C. No. 2000-P-0598. An appeal of a pre-complaint dismissal of a charge alleging a union breached the duty of fair representation by precluding an employee from presenting certain evidence at an arbitration. The parties completed briefing on August 31, 2000.

8. Fowler v. LRC, A.C. No. 200-P-0451. An appeal from a full Commission decision concluding that the Boston Water and Sewer Commission did not violate Sections 10(a)(1) and (3) of Chapter 150E by discharging an employee for engaging in organizing activity. The Commission determined that the evidence did not demonstrate that the Employer had knowledge of the employee's concerted, protected activity. The parties completed briefing on July 14, 2000.

9. Massachusetts Organization of State Engineers and Scientists v. LRC, A.C. No. 2000-P-647. An appeal from a full Commission decision concluding that the Employer did not change an established practice of paying employees an in-service bonus. The parties completed briefing on July 27, 2000.

10. City of Westfield v. Labor Relations Commission, A.C. No. 00-P-1981. An appeal from a full Commission decision concluding that the City of Westfield violated Sections 10(a)(5) and (1) of Chapter 150E by unilaterally discontinuing its practice of allowing employees to remain on injury leave until they are physically able to return to their regular duties. The parties completed briefing on October 27, 2000.

11. Collective Bargaining Reform Association v. Labor Relations Commission, SJC No. 08468. The Supreme Judicial Court granted direct appellate review from a decision of the Superior Court concluding that a decision of the Commission dismissing a representation petition seeking to sever communication equipment operators from a

bargaining unit of City employees was not a final order subject to judicial review. The parties completed briefing on February 14, 2001.

12. Town of North Attleboro v. Labor Relations Commission, A.C. No. 01-P-0026. An appeal from a full Commission decision holding that the Town of North Attleboro had violated Sections (10)(a)(5), (2), and (1) of Chapter 150E by refusing to implement an authorized increase in union dues deductions. The parties completed briefing on April 17, 2001.

13. Sullivan v. Labor Relations Commission, A.C. No. 01-P-0122. An appeal from a pre-complaint dismissal concluding that the charge was untimely and that the Commission's investigation did not reveal sufficient facts to establish probable cause to believe that the Brookline Firefighters, Local 950, IAFF had breached its duty of fair representation to the appellant. The parties completed briefing on June 7, 2001.

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